

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2014-346-WS

IN RE: Application of Daufuskie Island Utility)	ORS MEMORANDUM
Company, Incorporated for Approval of an)	REGARDING A
Increase for Water and Sewer Rates, Terms)	HEARING ON REMAND
and Conditions)	

The Office of Regulatory Staff (“ORS”) respectfully submits this Memorandum as requested by the Public Service Commission of South Carolina (“Commission”) regarding the matter argued on January 21, 2020, concerning the remand of this case from the South Carolina Supreme Court.

On January 21, 2020, counsel for the South Carolina Office of Regulatory Staff, Daufuskie Island Utility Company, and the Haig Point Club and Community Association, Inc. (“HPCCA”); and Melrose Property Owner’s Association, Inc. (“MPOA”), which are collectively known as the Property Owners Associations (“POAs” or “Intervenors”) appeared before this Commission and made arguments regarding the implementation of the South Carolina Supreme Court Opinion No. 27905.¹

Pursuant to the Court’s Opinion, “DIUC’s rate application will now go before the commission for a third hearing.” The Court’s Opinion states, “we do not address the merits at all” and that “we simply require the commission and ORS evaluate the evidence and carry out their important responsibilities consistently, within the ‘objective and measurable framework’ the law provides.”

¹ On July 24, 2019, the Court issued its Opinion No. 27905, which reversed the Commission’s Order.

DIUC's counsel filed a letter with the Commission on November 15, 2019, advising the Company did not intend to introduce any additional evidence in this matter as "the record is fully developed and another hearing for further testimony or evidence is not necessary." Counsel for ORS filed a responsive letter with the Commission on December 6, 2019, stating that "provided DIUC submits no additional evidence, ORS is prepared to rest on the evidence it submitted in the initial two hearings."

As stated previously, ORS believes the Commission, in the present case, is limited by the notice to its customers in its awarding DIUC increased rates and revenues. Any increase in allowable expenses, and the resulting revenue requirement may not exceed the rates noticed to customers. DIUC's Second Revised Notice of Filing and Hearing, was served by U.S. mail to its customers on June 29, 2015, and requested rates that result in revenues of \$2,267,721.

Additionally, because DIUC chose not to put its requested (applied for) rates into effect under bond pending resolution of the second appeal, it cannot collect revenues from its ratepayers going forward which it claims to have lost as a result of its decision to not post a bond while the current appeal was pending. The Commission is a body of limited jurisdiction and only has those powers vested in it by act of the General Assembly. *Piedmont & Northern Ry. Co. v. Scott*, 202 S.C. 207, 24 S.E.2d 353 (1943), see also, *Black River Elec. Co-op., Inc. v. Public Service Commission*, 238 S.C. 282, 120 S.E.2d 6 (1961). The Company is similarly prohibited from charging its customers for any interest on any alleged lost revenues. Rate-making is a prospective rather than a retroactive process. *S.C. Elec. & Gas Co. v. Pub. Serv. Comm'n*, 275 S.C. 487, 272 S.E.2d 793 (1980). The awarding of any rates which provide for the future collection of any past lost revenues or interest through rates would constitute retroactive ratemaking, which is

“prohibited based on the general principle that those customers who use the service provided by the utility should pay for its production rather than requiring future ratepayers to pay for past use.”

Porter v. South Carolina PSC, 328 S.C. 222, 231, 493 S.E.2d 92 (1997).

Regarding DIUC’s authorized rate base, as stated previously, ORS offers no additional information beyond that already contained in the record, which contains ORS’s position. As with the inclusion of additional rate case expenses, the Commission is limited to only authorize an increase in rate base and expenses that produces the rates and revenue requirement requested by DIUC and noticed to its customers in 2015.

In addition to the limitation imposed by the notice and the prohibition against retroactive rate-making, ORS believes that DIUC is only entitled to expenses where the evidence indicates payment by the Company. In the last reconsideration hearing, ORS accurately recommended that the Commission exclude certain expenses that failed to meet certain standards; one being an allowable expense for ratemaking purposes must have been proven to have actually been incurred or paid by the utility. DIUC’s customers should not be ordered to pay for potential expenses or expenses that may or may not eventually be paid by the Company. If those expenses were included in the ratemaking process yet never paid by the utility; the utility would earn revenues that it should not be entitled to collect.

Based upon representations made by counsel for DIUC, ORS does not plan to submit any additional evidence in this case and has not conducted any new discovery or audits of any of the Company’s expenses. ORS respectfully requests that the Commission issue an Order in this case awarding DIUC rates and revenues that include rate case expenses in an amount that includes the amount awarded by the Commission in its last Order plus the \$75,000.00 that the South Carolina

Supreme Court interpreted as having been taken away from the Company after the Commission's initial Order in this matter.

Finally, ORS believes that the Commission is constrained by the rates noticed to customers and cannot award DIUC rates and revenues which exceed those amounts.

Respectfully submitted,

s/ Andrew Bateman

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